Subject Index

Table of Authorities Cited

Codes

Texts

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 138

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. Reed Furniture Company (a corporation), Bankrupt,
Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY (a corporation),
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS.

STATEMENT OF FACTS INVOLVED.

Respondent, Lawrence Warehouse Company, hereinafter called "Lawrence", a California corporation (R. 3), is engaged in the field warehousing business upon a national scale. On November 14, 1946, it en-

tered into a field warehouse storage agreement with the C. A. Reed Furniture Company, hereinafter called "Reed" (R. 44) and at the same time leased a portion of Reed's premises upon which to conduct the warehousing operation. (R. 6, 7.) The contract set forth in great detail the basis upon which storage rates and charges were to be computed. (R. 45-46.) Soon thereafter Reed pledged certain commodities to the California Bank as security for advances (R. 4), depositing said commodities with Lawrence and receiving from the latter, as evidence of said deposit, *non-negotiable* warehouse receipts naming the bank as owner. (R. 5, 19.) These receipts were then delivered to the bank. (R. 5.)

Upon the face of each receipt issued by Lawrence, the following statement appeared:

> "Subject to lien for storage, handling, insurance and other charges as per contract and lease with the industry served." (R. 19.)

It should be noted that the photostatic copy which appears in the printed transcript (R. 19), is not an accurate reproduction of the receipts in issue. Due to the mechanical difficulties involved in making a photostat of a photostat the words "copy of a non-negotiable warehouse receipt" which clearly appears across the face of the original have become too dim to be seen.

On July 3, 1947, the California Bank, as owner, demanded that Lawrence deliver to it the possession of the warehoused commodities. (R. 9.) In com-

pliance with this demand of the owner and holder of its warehouse receipts, Lawrence delivered the commodities to the bank on the same day. (R. 9.) On July 11, 1947, Reed became bankrupt and the petitioner was thereafter elected trustee. (R. 12.) Some four months after the pledge holder (Lawrence) had delivered the pledged property to the pledgee (the Bank) and after the Bank had sold the property and applied the proceeds to reduce the loan (R. 9), the trustee commenced this action on November 19, 1947.

In his action the petitioner attempted to set aside all of the transactions between Reed, as pledgor, Lawrence, as pledge holder, and the Bank as pledgee, except of course the loan by the Bank to Reed, upon the sole ground that the non-negotiable warehouse receipts issued by Lawrence to the Bank as evidence of the pledge did not state upon their face the rate of storage charges per month or season, as required by Section 1858(b) of the Civil Code of California. The prayer of the complaint requests repayment by Lawrence and the Bank of the $83,808.00 received by the Bank from the sale of the pledged commodities at the pledgee's sale.

Respondent, Lawrence Warehouse Company, moved for a summary judgment upon the following grounds: that Reed and Lawrence had theretofore entered into a written contract for the storage of certain goods; that that contract stated in detail the charges to be assessed for storage; that the contract charges were incorporated into the warehouse receipt by reference upon the face of the warehouse receipt; that Section

1858(b) of the Civil Code of California was repealed by the later passage of the Uniform Warehouse Receipts Act by the California legislature; that the warehouse receipts in question were valid under the Uniform Act; that even if Section 1858(b) of the Civil Code was not repealed, the receipts were valid and title to the goods was in the bank. After the submission on briefs, and after oral argument upon the motion, summary judgment was granted by the District Court. (R. 49-52 inclusive.) Upon appeal the Circuit Court of Appeals for the Ninth Circuit affirmed. (R. 61-70 inclusive.) Petition for rehearing was denied. (R. 70.)

QUESTIONS INVOLVED.

1. The warehouse receipts in question are clearly valid under the California (Uniform) Warehouse Receipts Act.

2. Was Section 1858(b) of the Civil Code of California repealed by the enactment of the Uniform Warehouse Receipts Act?

3. If no such repeal was effected, are warehouse receipts which do not comply with the requirements of Section 1858(b) void?

4. Did these receipts comply with Section 1858(b)?

PART I.

THIS IS NOT A PROPER CASE FOR CERTIORARI.

This Court has consistently adhered to the principle that certiorari will be granted only where the case involves grave and serious issues. *Magnum Import Co. v. DeSpoturno Cody,* 262 U. S. 159, 67 L. Ed. 922 (1922.) The mere presentation of a novel point is not, in itself, sufficient. *S. S. Ansaldo San Giorgio I. v. Rheinstrom Bros. Co.,* 294 U. S. 494, 79 L. Ed. 1016 (1934.) The fact that a Federal Court has construed a state statute does not in itself justify review by the Supreme Court. In *Ex parte Woods,* 143 U. S. 203, 36 L. Ed. 125 (1892), the Court said:

> "* * * we do not regard the inquiry as to whether it was settled law in the State of Minnesota that a judgment of dismissal in a former suit, such as pleaded here, was not a bar to a second suit upon the same cause of action, or whether the law in respect of recovery by a servant against his master for injuries received in the course of his employment was properly applied on the trial of this case, as falling within the category of questions of such gravity and general importance as to require the review of the conclusions of the Circuit Court of Appeals in reference to them."

Great weight has been given by this Court to the decisions of Federal District and Circuit Court judges on the law of the state in which said judges sit. *Gardner v. New Jersey,* 329 U. S. 565, 91 L. Ed. 504 (1946). *Helvering v. Stuart,* 317 U. S. 154 (1942). Four federal judges, all of whom are thoroughly familiar with California laws, have already con-

sidered all of the aspects of this case and all have agreed as to the proper decision. We submit that there is no need for further review.

PART II.

THE RECEIPTS INVOLVED HEREIN ARE VALID UNDER SECTION 2 OF THE UNIFORM WAREHOUSE RECEIPTS ACT.

It is our belief that the statement printed on the face of the warehouse receipts here in question complies with both Section 1858 and Section 2 of the Uniform Act. (See Part. IV.) For the sake of argument, however, let us assume that our views are incorrect and that there was no statement on the warehouse receipt with reference to charges.

What is the effect of omitting one of the requirements of Section 2 from a warehouse receipt? Petitioner's brief is so barren of cases dealing with this subject that the Court might be led to believe that this was a matter of first impression. Such is far from the case. A long line of decisions consistently upholds the validity of receipts which are lacking one or more of the requirements of that section.

In *Equitable Trust Co. v. A. C. White Lumber Co.*, 41 F. (2d) 60 (D. C. Id., 1930), the Court dealt with the petitioner's contention in the following language:

> "The only purpose of embodying in the receipt the rate of storage charges, or liabilities incurred by the warehouseman, is to preserve the lien and secure the payment to the warehouseman of such charges. (Citing cases.) So the proper construction of the statute, when applied

to the receipts in question, is that the receipts are not rendered invalid or non-negotiable by the omission of the rate of storage charges, if such appears therein." (p. 65.)

It should be noted that the District Court relied upon this decision as the basis for its summary judgment.

The Illinois Supreme Court in *Manufacturer's Mercantile Co. v. Monarch Refrigerating Co.*, 107 N. E. 885 (1915), reached the same result as to receipts on which the storage charges were left blank, saying:

"The requirements of Section 2 were imposed for the benefit of the holder of the receipt and of the purchasers from him. It was not intended that failure to observe them should render the receipt void in the hands of the holder." (p. 887.)

In *New Jersey Title Guarantee & Trust Co. v. Rector*, 75 A. 931 (N. J. 1910), the Court held that the omission of storage charges did not affect the validity of a receipt. It said at page 932:

"The receipt in this case is not a negotiable one, and it is not pretended that any person has suffered any damage because of the alleged omission of two of the terms named in the act, but the warehouseman in such case is liable under Section 7 to any person purchasing a receipt, supposing it to be negotiable, if the warehouseman neglects to mark it 'non-negotiable.' In each case the terms recited in the act are rather for the benefit of third persons or innocent holders than the original parties, and in either case omissions do not destroy the character of the writing as a warehouseman's receipt."

The following cases reach a similar result:

Joseph v. P. Viane, Inc., 194 N. Y. S. 235 (1922);

Woldson v. Davenport Mill & Elevator Co., 13 P. (2d) 478 (Wash. 1932);

Smith Bros. Co. v. Reicheimer, 83 So. 255 (La. 1919);

Arbuthnot v. Reicheimer, 72 So. 251 (La. 1916);

In re Quaker City Cold Storage Co., 49 F. Supp. 60 (D. C. Pa. 1943) (affd. 138 F. (2d) 566) (C.C.A. 3rd 1943);

Laube v. Seattle Nat. Bank, 228 P. 594 (Wash. 1924);

Finn v. Erickson, 269 P. 232 (Ore. 1928);

Bank of California Nat. Ass'n. v. Schmalz, 9 P. (2d) 112 (Ore. 1932).

Petitioner attempts to avoid the obvious conflict between his interpretation of Section 1858 and the general interpretation of Section 2 by contending that the Uniform Act is not a penal act. Even a superficial reading of Sections 50 through 55 of the Uniform Act shows this to be an erroneous assumption. Those sections establish a comprehensive scheme of criminal penalties in connection with the issuance of warehouse receipts and yet petitioner would have us believe that the California legislature intended the Courts to look to earlier statutes to discover further penalties for use in situations which are specifically covered by the Uniform Act.

PART III.

THE UNIFORM WAREHOUSE RECEIPTS ACT REPEALED SECTION 1858 OF THE CIVIL CODE OF CALIFORNIA AND CONTROLS THE DECISION IN THIS CASE.

Section 1858 of the Civil Code of California was enacted in 1901 while the Uniform Warehouse Receipts Act, hereinafter called Uniform Act, was adopted by California in 1909. The latter is a complete exposition of the law of warehouse receipts and the California Courts following the decision of this Court in *Commercial Natl. Bank v. Canal-Louisiana B. & T. Co.*, 239 U. S. 520, 60 L. Ed. 417 (1915), have held that the Uniform Act superseded and repealed earlier acts. *Jewett v. City Transfer & Storage Co.*, 18 Pac. (2d) 351, 128 Cal. App. 556 (1933).

Petitioner asserts that § 1858 could not have been repealed by the Uniform Act unless the two acts were inconsistent and repugnant. Such an assertion finds no justification in the law of California where it is well established that a general revisory statute automatically repeals any earlier enactments in the same field *even though the two statutes are not inconsistent or repugnant.*

> "While it has been said that in the absence of an express repealing clause a repeal by implication will only take place where the subsequent statute is clearly repugnant to or inconsistent with the provisions of the prior law, it is settled that whenever it clearly appears that a later statute is revisory of the entire subject matter of an earlier one, and was designed as a substitute therefor in all respects, and to cover the entire

subject matter to which both relate, the later statute will operate as a repeal of the earlier one, *although it contains no precise words to that effect, and there are no inconsistencies or repugnancies between them.* * * * This, it has been said, is not so much a repeal by implication as a question of enforcing the will of the legislature last expressed upon the very same subject." (Italics ours.)

23 *Cal. Jur.* 701, 702, 703.

That the Uniform Act is such a revisory statute was decided in the *Jewett* case, supra, where it was said at page 562:

"Considering the provisions of the statute known as the Warehouse Receipts Act, it is apparent that its purpose was to revise the entire subject matter relating to the general business of conducting a public warehouse. As hereinbefore indicated, if by any legal reason it may be held that any of the provisions of sections 3051 and 3052 of the Civil Code apply to the subject of liens of warehousemen, those provisions, as to such liens, must be deemed repealed by the later legislative act."

See also:

Estate of Canagher, 183 P. 161, 181 C. 15 (1919);

Harris v. Cooley, 152 P. 300, 171 C. 144 (1915.)

This is in harmony with the consistent efforts of the California Courts to give the broadest possible effect to the provisions of the various uniform acts.

Chichester v. Commercial Credit Co., 99 P. (2d) 1083, 37 C. A. (2d) 439 (1940);

Porter v. Gibson, 154 P. (2d) 703, 25 C. (2d) 506 (1944);
Mortgage Guarantee Co. v. Chotiner, 64 P. (2d) 138, 8 C. (2d) 110 (1936);
Utah State National Bank v. Smith, 179 P. 160, 180 C. 1 (1919).

We should like to point out, however, that the two statutes actually are inconsistent. As we have seen, there is no question but that these receipts are valid under the Uniform Act. Petitioner claims that under his construction of Section 1858 they are invalid. Thus, if he is correct, the application of Section 1858 to these receipts would result in a holding which would be absolutely contrary to the holding which would result from the application of the Uniform Act.

The cases relied upon by petitioner do not support his position.

Lewis-Simas-Jones Co. v. C. Kee & Co., 148 P. 973, 27 Cal. App. 135 (1916), involved the question as to whether it was necessary to transfer a non-negotiable receipt in order to deliver the commodities represented by said receipt. Before the adoption of the Uniform Act, the California law had not required the transfer of such a receipt, but permitted the warehouseman to deliver the commodities upon the written order of the owner of the goods. In this case, defendant contended that the Uniform Act had changed the former rule. The Court held that as the Uniform Act was identical to the old California rule in this

particular there was no reason to change the former rule. It is apparent that this holding merely states the general rule on this point and in no way supports an assertion that legislation enacted before the Uniform Act was not repealed by the enactment of the latter Act.

In the case of *Norton v. Lyon Van & Storage Co.*, 49 P. (2d) 311, 9 Cal. App. (2d) 199 (1935), the question was the constitutionality of the sections of the Uniform Warehouse Receipts Act dealing with the notice of sale to be given by a warehouseman who was enforcing his lien. The Court held that it could find no reason for declaring those sections unconstitutional. Then, by way of *dicta,* the Court said that in any event the Civil Code of California (Sections 1856, 3051 and 3052) guaranteed the warehouseman his lien. It should be noted that the above statement was in no way necessary to the decision of the matter and it does not appear that the question of effect of the Uniform Act on the older sections was ever argued by the parties.

The petition cites the following cases to establish the point that Section 1858 had not been repealed: *A. Widemann Co. v. Digges,* 131 P. 882, 21 Cal. App. 342 (1913); *Chatterton v. Boone,* 81 A. C. A. 1108 (1947); *Northwestern M. F. Assn. v. Pacific Co.,* 200 P. 934, 187 C. 38 (1921); and *Defense Supplies Corporation v. Lawrence Warehouse Company,* District Court, N. D. California, S. D., 67 Fed. Supp. 16 (1946). The only possible reason for this must be

that each of these cases referred to that section. We must point out, however, that in none of those cases was the issue of the effect of the Uniform Act upon Section 1858 brought to the attention of the Court. In the absence of argument upon this point, it was perhaps understandable how the Court might merely cite this section without giving the matter any thought, and certainly without tending to establish the proposition that 1858 was not repealed by the Uniform Act.

In his petition the trustee also set forth a rather startling argument that the Legislature of California had repudiated the case of *Heffron v. Bank of America*, supra, by later enacting Section 3440.5 of the Civil Code. We should first like to point out that the question of the effect of later legislation upon the Uniform Warehouse Receipts Act had absolutely no connection with this case. We should also like to point out that Section 3440.5 was passed *before* the decision in the *Heffron* case was handed down. (A later modification did not affect the substance of the section but merely clarified certain inherent ambiguities.) It was commented on by the Circuit Court as follows:

> "The enactment in 1939 of Section 3440.5 of the Civil Code may fairly be considered as a move to clarify existing law or to remove doubts of the nature prompting the present litigation." (p. 243.)

It is clear that the later decision harmonized with the earlier statute and not, as contended by petitioner, that the earlier statute repudiated the later decision.

We believe that the effect of the Uniform Act on earlier California statutes has been definitely stated by the *Jewett* case. The views there expressed are in harmony with this Court's decision in the *Canal-Louisiana Bank* case, supra, and with the decision of the Ninth Circuit in the *Heffron* case. It also accords with the policy of making uniform the commercial and financial practices in the various states. The uniformity which the California Legislature and the California and Federal Courts have so earnestly sought cannot be achieved if an earlier statute is made paramount to the Uniform Act.

We submit that Section 1858 of the Civil Code of California was repealed by the adoption of the Uniform Act. As the receipts in question are valid under the Uniform Act, petitioner's cause of action against Lawrence Warehouse Company must fail.

PART IV.

SECTION 1858 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA DOES NOT INTEND TO INVALIDATE RECEIPTS WHICH DO NOT EXACTLY COMPLY THEREWITH.

We have shown that Section 1858 has no application to this case. Conceding its application, however, for the sake of argument, it does not follow, as claimed by petitioner, that these receipts are void.

Petitioner apparently claims that contracts made in violation of any statute containing a criminal penalty are void in California. This proposition does not

square with the basic concept of statutory construction that there is no ironclad rule of interpretation which can be automatically applied to all statutes. The primary task of the Court in each case is to determine the intent of the Legislature which passed the statute under consideration. Our task is, then, to determine the legislative intent in enacting Section 1858.

Most statutes of the type of Section 1858 have been held not to invalidate contracts made in violation thereof. The rule as stated in 6 *R.C.L.* 701, reads as follows:

> "The rule that a contract is invalid if it conflicts with a statute is, however, not an inflexible one. It is only when the statute is silent, and contains nothing from which the contrary is to be inferred, that the contract is void. Therefore where a statute which prohibits a contract at the same time also limits the effect, or declares the consequences which shall attach to the making of it, the general rule that contracts prohibited by statute are void does not apply."

This Court in *Harris v. Runnels,* 12 How. 79, 84, 13 L. Ed. 901, 903 (1851), dealt with a similar statute in the following language:

> "It is true that a statute, containing a prohibition and a penalty, makes the act of which it punishes unlawful, and the same may be implied from a penalty without a prohibition; but it does not follow that the unlawfulness of the act was meant by the Legislature to avoid a contract made in contravention of it."

One of the most elaborate discussions of the precedents on this point is to be found in *In re T. H. Bunch Co.,* 180 F. 519 (D. C. Ark. 1910), where at page 527, the Court said:

> "When a statute imposes specific penalties for its violation, where the act is not malum in se, and the purpose of the statute can be accomplished without declaring contracts in violation thereof illegal, the inference is that it was not the intention of the lawmakers to render such contracts illegal and unenforceable."

See also:

Adams Express Co. v. Darden, 286 F. 61 (C.C.A. 6th, 1923);

Furlong v. Johnston, 204 N.Y.S. 710 (App. Div. 1924);

Uhlmann v. Kin Dow, 193 P. 435 (Ore. 1920).

There can be no doubt that the above rule applies in California. The Supreme Court of the State of California in *Bentley v. Hurlburt,* 96 P. 890, 153 C. 796 (1908) said:

> "The rule (that a contract in violation of a statute is void) is, however, not without exceptions. In *Harris v. Runnels,* 12 How. (U. S.) 79, the Supreme Court of the United States, said 'Before the rule can be applied in any case of a statute prohibiting or enjoining things to be done, with a prohibition and a penalty, or a penalty only for doing a thing which it forbids, the statute must be examined as a whole, to find out whether the makers of it meant that a contract in contravention of it should be void, or that it was not to be so'." (p. 801.)

The validity of the doctrine was also sustained in:

Blockman Commercial & Savings Bank v. F. G. Investment Co., 171 P. 943, 177 Cal. 762 (1918);

Wood v. Krepps, 143 P. 691, 168 C. 382 (1914);

Levison v. Boas, 88 P. 825, 150 C. 185 (1906).

It is submitted that in prescribing a criminal penalty and civil liability for damages, the Legislature intended to set forth all of the penalties and effects of Section 1858. As stated before, the requirements that the storage charges be stated on the receipt is to protect the holder of the receipt against secret liens. The penalties set forth fully accomplish this. First, a criminal penalty is provided as a punishment and a deterrent; then a civil remedy is given to the injured party. What more is needed? Certainly there is nothing in what is sought to be accomplished which demands that a warehouse receipt—which often circulates freely and is the basis of many commerical transactions—be void.

On page 17 of his brief petitioner cites 14 cases which he claims support the proposition that the California Courts have held that *any* contract made in violation of a criminal statute is void. While each of the cited cases held contracts to be void, not one of them dealt with warehouse receipts or any contract which is analogous to a warehouse receipt. They dealt with securities issued in violation of the California Blue Sky laws, with the sale of realty by reference to unrecorded maps and with contracts made by public officers with corporations in which they had a personal

interest. Each case held that for reasons of policy the legislative intent was to avoid the type of contract under consideration. It should also be noted that none of the statutes under consideration contained both civil and criminal remedies as does the Warehouse Receipts Act as well as Section 1858.

We submit that the California Legislature did not intend that the failure of warehouse receipts to comply with all of the requirements of the Civil Code should invalidate the receipts in the hands of innocent holders for value.

PART V.

(a) THE PHRASE "SUBJECT TO LIEN FOR STORAGE HANDLING, INSURANCE AND OTHER CHARGES AS PER CONTRACT AND LEASE WITH THE INDUSTRY SERVED" WHICH APPEARED ON THE FACE OF THE RECEIPT WAS SUFFICIENT IN ITSELF TO SATISFY THE STATUTORY REQUIREMENTS.

It has been established that substantial compliance with the statutory requirements governing the contents of a warehouse receipt is sufficient. (*Standard Bank of Canada v. Lowman,* 1 F. (2d) 935 (D.C. Wash., 1924).

In *Boas v. De Pue Warehouse Co.,* 69 C. A. 246 (1924) (Sup. Ct. denied petition for hearing December 15, 1924), this rule was applied by a California Court to the statement of storage charges. In answer to the claim that a warehouseman's lien for charges extended only to those charges which were mentioned on the receipt, the Court said (pp. 249-250):

"A warehouseman does not lose his lien for charges by failure to fully insert them in a non-negotiable receipt. The purchaser of a non-negotiable instrument is put upon notice that there may be a lien for charges not mentioned therein. * * *

"One to whom a receipt has thus been transferred acquires thereby as against the transferor the title to the goods subject to the terms of any agreement with the transferor. * * *

"A warehouseman issuing a non-negotiable receipt which contains, as here, a recital that the goods stored are subject to a lien for charges is entitled to a lien to the extent of such charges, even though the amount is not stated in the receipt (Western Bank v. Marion Distilling Co., 89 Ky. 91 (5 S.W. 458)), and such recital is sufficient to put the assignee upon notice of the warehouseman's lien (Security Bank v. Minneapolis Cold Storage Co., 55 Minn. 101 (56 N.W. 582)."

This rule was approved and extended in *San Angelo Wine etc. Co. v. South End Warehouse Company,* 61 P. (2d) 1235, 19 C. A. (2d) 749 (1937), by holding that the lien thus created was general and not specific.

It is noteworthy that in reaching its decision the Court ignored Section 1858 and discussed only the Uniform Act. If the Court had felt that Section 1858 was applicable, this receipt would have clearly violated subsection (c) thereof. It is submitted that this case requires a holding that the receipts in issue are valid.

In the *Minneapolis Cold Storage* case, cited above by the Court, the receipt said that the goods were deliverable "upon the payment of charges" and then left the amounts blank. The Court held that this gave the transferee of the receipt sufficient notice of the possibility of charges to support the warehouseman's lien. (See also: *Stein v. Rheinstrom,* 50 N. W. 827 (Minn. 1891).)

It seems clear that the Courts view the statement of storage charges on the receipt as a means of protecting a receipt holder, especially a negotiable receipt holder, from secret liens. The above cases demonstrate that the wording which is more indefinite than that contained on the face of the Lawrence receipts will accomplish this purpose. Certainly if a California Court will uphold a lien for charges which are not stated, it can scarcely be contended that a failure to set forth these charges invalidates the receipt.

It is submitted that the phrase "subject to lien for storage, handling, insurance and other charges as per contract and lease with the industry served" which appeared on the Lawrence receipt accomplishes the legislative purpose and satisfies the requirements of Section 1858 of the Civil Code.

(b) THE WAREHOUSING CONTRACT WHICH CONTAINED A DETAILED STATEMENT OF STORAGE RATES WAS INCORPORATED BY REFERENCE INTO THE RECEIPTS.

These receipts specifically state that the storage rates shall be those set forth in the contract and lease

between Lawrence and "the industry served", which in this case is the C. A. Reed Furniture Company. It is well established that writings referred to in a contract shall be construed as part of the contract, 3 *Williston on Contracts*, Rev. Ed. 1801; 17 *C.J.S.* 716. This doctrine has been applied to warehouse receipts. (*Kirpatrick v. Lebus*, 211 S. W. 572 (Ky. 1919).) It is also well established that parol evidence is acceptable to explain a warehouse receipt (*Starr v. Beerman*, 189 N.Y.S. 174 (App. Div. 1921)) and that the previous course of dealings between the parties is competent evidence as to the meaning of receipts. (*Blackburn Trading Corp. v. Export Fr. Forwarding Co.*, 198 N.Y.S. 133 (App. Div. 1923).)

Respondent, Lawrence Warehouse Company, submits that this reference to and incorporation of the warehousing contract in the receipt satisfied the statutory requirements.

CONCLUSION.

Respondent feels that petitioner has failed to show sufficient grounds for this Court to grant a writ of certiorari. The matter has been thoroughly argued and briefed below and two Courts have held that no cause of action was alleged against respondent, Lawrence Warehouse Company. As appears from this brief, each of the lower Courts had valid and sound legal grounds upon which to base its decision and both of said decisions are amply supported by decisions of both the federal and the California Courts.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Dated, San Francisco, California,
August 2, 1948.

Respectfully submitted,
WILLARD F. WILLIAMSON,
Attorney for Respondent.

W. R. WALLACE, JR.,
W. R. RAY,
JOSEPH MARTIN, JR.,
Of Counsel.